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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 UNITED STATES,

12 Plaintiff,

13 vs.

14 RENE MUNOZ-MARTINEZ,

15 Defendant.

CASE NO. 10cr4618-LAB-1 and  
12cv1202-LAB

**ORDER DENYING MOTION FOR  
REDUCTION OF SENTENCE  
PURSUANT TO 18 U.S.C.  
§ 3582(c)**

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17 Defendant Rene Munoz-Martinez pleaded guilty, pursuant to a plea agreement, to  
18 one count of importation of methamphetamine. He received the benefit of acceptance of  
19 responsibility and fast track. On May 14, 2011, he was sentenced to 46 months'  
20 imprisonment followed by five years' supervised release for importation of  
21 methamphetamine.

22 Approximately a year after he was sentenced, Munoz-Martinez, now a prisoner in the  
23 Reeves County Detention Center in Pecos, Texas, filed a motion (the "Motion") pursuant to  
24 18 U.S.C. § 3582(c) to reduce his sentence. (Docket no. 25 in 10cr4618 and no. 1 in  
25 12cv1202.) The Motion doesn't say why Munoz-Martinez thinks his sentence ought to be  
26 reduced. The Motion was submitted on a form questionnaire available through the Northern  
27 District of Texas and intended for use by defendants seeking reduction pursuant to  
28 § 3582(c)(2) under the retroactive "crack cocaine amendment" to the sentencing guidelines.

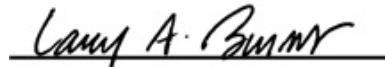
1 See <http://www.txnd.uscourts.gov/forms/criminal.html>. Although the Motion represents that  
2 Munoz-Martinez's conviction involved crack cocaine, in fact it involved methamphetamine.  
3 Munoz-Martinez is ineligible for a sentence reduction under § 3582(c)(2) or any other  
4 provision of § 3582(c).

5 Based on the timing of the Motion,<sup>1</sup> it appears Munoz-Martinez might have been  
6 attempting to file his motion as being brought pursuant to 28 U.S.C. § 2255. But construing  
7 it as a § 2255 motion would be futile, because Munoz-Martinez waived appeal and collateral  
8 attack.<sup>2</sup>

9 Because Munoz-Martinez is ineligible for a sentence reduction under § 3582(c), the  
10 Motion is **DENIED**.

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12 **IT IS SO ORDERED.**

13 DATED: December 17, 2012

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15 **HONORABLE LARRY ALAN BURNS**  
16 United States District Judge  
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23 <sup>1</sup> Munoz-Martinez filed the Motion approximately a year after he was sentenced. The  
24 date he submitted it is unclear, however; it says he signed it on "this 4 of \_\_\_\_\_, 2012." The  
25 postmark is illegible. It wasn't received and filed until May 17, 2012, however. Regardless  
of what the actual date was, it appears Munoz-Martinez was trying to comply with § 2255(f)'s  
one-year limitations period.

26 <sup>2</sup> As part of his plea agreement, Munoz-Martinez waived appeal or collateral attack,  
27 unless the Court imposed a custodial sentence above the high end of the guideline range  
28 recommended by the government pursuant to the plea agreement. (Docket no. 12 at 10:6–18.) The government kept its bargain by making the recommendations required by the  
plea agreement. (*Compare* Docket no. 12 at 7:9–8:8 (plea agreement), *with* Docket no. 19  
(government's sentencing memorandum).) Then the Court sentenced him below the  
guideline range.